IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6719 OF 2003

M/s. Span Overseas Ltd., ..Petitioner.

Versus

M/s. Mahavir Butyl Rubber Industries Pvt.Ltd., & Ors. ..Respondents.

Mr. Madhav Jamdar for the Petitioner.

Mr. Y.P. Yagnik for the Respondents- Absent.

CORAM : S. A. BOBDE, J.

DATED : 29TH JUNE, 2005.

P.C.:

1. Notice for final disposal has been issued by this Court. Respondents though served do not appear. None appears on behalf of the Respondents.

2. The Petitioner has filed the suit under Order 37 of the C.P.C. against the Respondents. Initially, the trial court granted leave to the defendant to

defend a suit on defendant's depositing Rs. 57,51,028/- in the court within a month of the order dated 21.01.2000. This order was subsequently modified by this court in civil revision application No. 448/2000, wherein as regards defendant No.1, this court on 2nd August, 2000 passed the following order :-

> b) The first defendant is granted conditional leave to defend subject to first defendant depositing a sum of Rs. 12,50,000/- now before the trial court within three months from today.

Accordingly, defendant No.1 ought to have deposited the said amount on or before 2nd November, 2000. Since the said defendant, who is respondent No.1 herein did not do so, the plaintiff applied for judgment and decree against respondent No.1 in accordance with Order 37, Rule 6(b) of the C.P.C.. The learned trial Judge has not decided the said application and has observed in his order dated 01.07.2003 that the application will be considered at the time of the judgment. That order is challenged

before this court.

3. Mr. Jamdar, learned counsel for the petitioner relied upon Order 37, Rule 6(b), which reads as follows :-

> "(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith."

4. In particular, the learned counsel submitted that in accordance with clause (b) above, the defendant who does not give security within the time fixed by the court, the plaintiff becomes entitled to judgment forthwith and the court cannot defer giving a judgment. There is substance in the contention on behalf of the petitioner. It must be noted that Order

37 itself deals with a summary procedure. In certain cases, the intention obviously being to enable the plaintiffs who have a claim of the kinds specified in Rule 1, to obtain a judgment in accordance with the summary procedure prescribed therein. Rule enabling the defendant to apply for leave to defend, which may or may not be granted. Rule 6(b) relied upon by the petitioner is very clear, where such a prayer may or may not be granted conditional or unconditional. But one of the conditions is that the defendant is directed to give security. Rule 6(b) makes it clear that if the defendant fails to give such security within time specified by the court the "plaintiffs" shall be entitled to a judgment forthwith. I am of the view that having regard to the intent and purport of this rule, the rule is mandatory and the court is bound to deliver judgment in case of non-compliance of the rule. The court is not, as has been done by the impugned order, entitled to defer the judgment on an application which brings such non-compliance to the notice of the court. In this view of the matter, I am of the view that the impugned order suffers from error of law apparent on its face and is therefore, liable to be set aside.

5. In these circumstances, the impugned order is set aside and the matter is remanded back to the Joint Civil Judge, Sr. Dvn., Pune, who is directed to proceed with a judgment in accordance with law, not later than 15 days from the date of the parties appeared before him. The parties are directed to appear before the trial court on 18th of July, 2005. The petitioner is directed to communicate this order to the Respondents.

6. Petition disposed of in the above terms.

29.06.2005 (S.A.BOBDE,J.)

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